

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

B & R Produce Packing Co., et al.

v.

Civil No. 13-cv-367-JD

A & H Farms, Inc. et al.

O R D E R

B & R Produce Packing Co., and other sellers of produce, brought suit to recover amounts the plaintiffs claim are owed to them by A & H Farms, Inc., Lori Coll, and Mark Coll. Default has been entered as to each defendant. The plaintiffs filed a motion for a prejudgment attachment on real estate that is owned by the Colls. The defendants did not file a response. The magistrate judge issued a report and recommendation that the motion for a prejudgment attachment be denied. The plaintiffs filed a late objection.

Discussion

Issues raised by a timely objection to the magistrate judge's report and recommendation are subject to review under 28 U.S.C. § 636(b)(1). Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010). Ordinarily, an untimely opposition to a report and recommendation, submitted without leave or adequate justification, waives review and the right to

appeal. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Grandison v. Moore, 786 F.2d 146, 148 (3d Cir. 1986); Means v. Dist. of Columbia, --- F. Supp. 2d, 2013 WL 6092238, at *3 (D.D.C. Nov. 20, 2013); Alamo Rodriguez v. MCS Life Ins. Co., 283 F. Supp. 2d 459, 462-63 (D.P.R. 2003)). However, the court may consider an untimely objection as part of its supervisory role. See Thomas v. Arn, 474 U.S. 140, 154 (1985)).

The magistrate judge recommends that the plaintiffs' motion for a prejudgment attachment on real estate be denied because the plaintiffs did not comply with the notice requirements of the New Hampshire prejudgment attachment statute, RSA 511-A:2. In their objection, the plaintiffs acknowledge that their motion does not comply with RSA 511-A:2 but suggest that they could provide the required notice as part of a hearing notice, if a hearing were scheduled. The plaintiffs' suggestion is too little and too late.

The notice required by RSA 511-A:2 is mandatory, not optional. See P.J. Currier Lumber Co., Inc. v. Stonemill Constr. Corp., 120 N.H. 399, 400-01 (1980). The magistrate judge properly recommended that the motion for a prejudgment attachment be denied due to the plaintiffs' failure to provide notice as required by RSA 511-A:2.

Conclusion

For the foregoing reasons, the magistrate judge's report and recommendation (document no. 11) is approved and adopted. The plaintiffs' motion for a prejudgment attachment (document no. 8) is denied.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

December 10, 2013

cc: Marc W. McDonald, Esquire